INSURGENCY.

LECTURES

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Ayala, writing in 1581, maintained that agreements made with pirates and rebels were not binding because both were public enemies. Grotius, in 1625, took the position that a ruler must keep his word even with deserters and rebels. The practice in regard to the treatment of pirates has been fairly uniform, while the treatment of those who have taken arms against their state has been widely varied. For many years it was common to regard those in arms against their state as outlaws. In recent years, however, whatever the theories may be, the practice has been to admit in revolutions a condition of hostilities prior to and not carrying with it the full rights of belligerency, which may be called insurgency. (Lawrence, Recognition of Belligerency in Naval Warfare; Jour. Royal United Service Institution, XLI, p. 7.)

Authorities do not agree as to what constitutes war. There is still less agreement as to the grounds justifying a recognition of belligerency. The opportunities for legitimate differences of opinion as to the nature of hostilities, prior to the recognition of belligerency, are very great.

From war in the full sense, *i. e.*, the condition of armed hostility between states, which is a fact easily recognized, down to the unarmed struggle between individuals of the same state, there are many grades of conflict. At a point between the struggle of state with state and of individual with individual, *there is a form of struggle, varying according to circumstances, but usually an armed struggle between two organized groups or parties within a state for public political ends, which is called insurgency.* The party opposing that in possession of the existing state organization is usually regarded as rebelling against the state and is called insurgent. The status of the insurgent party and the persons composing it has received relatively little definition. The treatment of insurgents has been so diverse as to make it impossible to claim that usage is fully established among civilized states.

It is necessary to distinguish insurgents from mobs having merely a chance bond of union, from strikers organized for nonpolitical ends, and from organized bodies which may be pursuing ends that are not public in their nature. Such bodies may, however, easily pass over into organizations which may be properly insurgent in their nature. Instances of such transition may be found in some

of the organizations existing just before the American civil war, and the Chinese "Boxers" seem to be a case recently illustrating this transition.

There may be many reasons why a foreign state should refrain from the recognition of belligerency, even though a domestic struggle may have attained proportions which would justify such action. As President McKinley, in giving reasons for refraining from the recognition of Cuban belligerency, stated in his message of December 6, 1897: "Turning to the practical aspects of a recognition of belligerency, and reviewing its inconveniences and positive dangers, still further pertinent considerations appear. In the code of nations there is no such thing as a naked recognition of belligerency unaccompanied by the assumption of international neutrality. Such recognition without more will not confer upon either party to a domestic conflict a status not theretofore actually possessed, or affect the relation of either party to other states. The act of recognition usually takes the form of a solemn proclamation of neutrality, which recites the *de facto* condition of belligerency as its motive. It announces a domestic law of neutrality in the declaring state. It assumes the international obligations of a neutral in the presence of a public state of war. It warns all citizens and others within the jurisdiction of the proclaimant that they violate those rigorous obligations at their own peril, and can not expect to be shielded from the consequences. The right of visit and search on the seas, and seizure of vessels and cargoes and contraband of war and good prize under admiralty law, must, under international law, be admitted as a legitimate consequence of a proclamation of belligerency." Professor Moore says in regard to the effect of the recognition of Cuban belligerency by the United States: "Moreover, the Cuban insurgents can at the present time purchase arms and munitions of war; they and their friends and sympathizers can go and come, unarmed and unorganized, to take part in the conflict; they can sell their securities to any one who will buy them. More than this they could not do, if their belligerency were recognized, unless they had ships on the ocean. They could neither employ persons in the United States to serve in their forces, nor fit out and arm vessels in our ports, nor set on foot hostile expeditions from our territory. On the other hand, Spain would be immediately invested by international law, as well as by the treaty of 1795, with the international rights of belligerency, which she has so far not claimed, including the right of visitation and search on the high seas, and the capture and condemnation of our vessels for violations of neutrality. It would enable Spain practically to put an end to the transportation of munitions of war for the insurgents. It would place under Spanish supervision all that vast commerce which passes through the

waters adjacent to Cuba." (Forum, 21, p. 297.) In other words, the state which recognizes the belligerency of a party to a domestic conflict thereby changes the status of that party by giving the belligerent such rights and duties as the international laws of war allow and by assuming for itself corresponding obligations. Prior to such recognition the foreign state was largely its own judge of its relations to the parties to the domestic conflict. Besides reasons such as enumerated in the message of the President, there may be reasons based upon the political, commercial, geographical, or other conditions which make it inexpedient for a foreign state to recognize the belligerency of an insurgent party. It is certain that a state is its own judge as to the time when it shall take such action unless it is forced to accept the fact by a declaration of war against the insurgents on the part of the parent state. As has been announced by the United States Court, "After official recognition by the sovereign, a citizen of a foreign state is estopped to deny the existence of a war with all its consequences as regards neutrals. They can not ask a court to affect a technical ignorance of the existence of a war." (Prize Cases, 2 Black, U. S., 635.)

While the parent state before recognition of belligerency may regard the acts of its rebellious subjects as crimes against the domestic laws which it holds are still binding over them, it can not prescribe the attitude of a foreign state toward the insurgents. (Wiesse, Le Droit International appliqué aux Guerres Civiles, 124.) To attempt this has been a common procedure on the part of states subject to frequent revolutions. During the revolt of 1885, in the United States of Colombia, the President of Colombia decreed "That as the vessels of the opposing party in the port of Cartagena were flying the Colombian flag, it was in violation of right and placed that party beyond the pale of international law." The United States refused to recognize the validity of the decree as affecting the relations of its officers to the insurgent party and Great Britain took a similar stand. The Congress of the United States has the constitutional right "to define and punish piracies and felonies committed on the high seas and offenses against the law of nations," yet Congress can not expect its definition to be accepted by other states unless it conforms to international usage. The definition would, however, be a sufficient warrant for the action of its own officers. Practice indicates that the parent state can not determine the attitude of foreign states toward its insurgent subjects, but that when the organized resistance to the parent state becomes too powerful for that state to control, at that point a foreign state may without offense determine what attitude it will assume. This may be merely an admission of the fact that organized hostilities exist in the disturbed state.

This admission of insurgency implies (1) that there is within the disturbed state a hostile, armed uprising temporarily beyond the control of its civil authority; (2) that this party is pursuing public ends by force, *i. e.*, is endeavoring to change the form of government, to reform the administration, or to attain some similar object; (3) that the conditions within the state are so disturbed as to materially affect outside states, and (4) that in the absence of control by the parent state outside states must have some relations with the insurgents. The diplomatic correspondence and the official proclamations of states show so many examples of the admission of a status of insurgency that it would seem to be a well-established fact. The Constitution of the United States recognizes that such a condition may arise within its own territory and in Article I, section 8, declares that Congress shall have power "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions." This looks to operations other than those provided for in giving Congress power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." In giving Congress power to call forth the militia "to execute the laws of the Union, suppress insurrection, and repel invasions" the aim is to secure domestic safety, (1) by the enforcement of law, (2) by putting down domestic conflicts, and (3) by protection from external attack. It is evident that insurrection is something different from mere violation of law to prevent which may require military force, as in the case of a strike. Insurrection gives rise to certain new conditions and relations. Whether conditions and relations are those of insurgency or of mere disobedience to laws is determined by the nature of the case, the methods and the aims of those opposing the established authority. Ordinarily, the nature of the struggle is plainly evident, and as such may be admitted by a foreign state in such manner as it may deem best. Sometimes this is by formal declaration, with a warning that citizens of the state making the proclamation give careful heed to observe the laws which might affect the relations of the state to the parties concerned in the conflict.

It has happened that the parent state has often attempted to give to insurgents the status of pirates, and in the treatises upon international law the most frequent reference to insurgency will be found incidentally under the heading of "piracy." This makes it necessary to consider the relations of piracy and insurgency. The case has been well put in the Manual issued by this Naval War College (p. 43): "A part of the definition of piracy applies to insurgents if found upon the seas; they have neither the commission nor the flag of any recognized government; and it may be asked, By what right are their ships of war upon the high seas?

It is agreed that they have not the rights of belligerents. On the other hand, an important part of the definition of piracy does not apply to them; they are not depredating upon the ships of all nations indiscriminately; their aim is not private plunder or gain; indeed, their motives may be patriotic and morally praiseworthy, while their acts are directed against but one nation, and are for political, not mercenary ends." [British Parliamentary Papers, Spain, No. 2 (1874); Peru, No. I (1877); Chile, No. I (1892).] As Hall says (International Law, 4th ed., p. 270), "It is impossible to pretend that acts which are done for the purpose of setting up a legal state of things and which may in fact have already succeeded in setting it up, are piratical for want of an external recognition of their validity, when the grant of that recognition is properly dependent in the main upon the existence of such a condition of affairs as can only be produced by the very acts in question."

The position of Secretary Fish has become almost classical. Speaking of the vessels of the insurgents against Haiti, he said: "That regarding them simply as armed cruisers of insurgents not yet acknowledged by this Government to have attained belligerent rights, it is competent to the United States to deny and resist the exercise by those vessels of any other agents of the rebellion of the privileges which attend maritime war, in respect to our citizens or their property entitled to our protection. We may or may not, at our option, as justice or policy may require, treat them as pirates in the absolute and unqualified sense, or we may, as the circumstances of any actual case shall suggest, waive the extreme right and recognize, where facts warrant it, an actual intent on the part of the individual offenders, not to depredate in a criminal sense and for private gain, but to capture and destroy *jure belli*. It is sufficient for the present purpose that the United States will not admit any commission or authority proceeding from rebels as a justification or excuse for injury to persons or property entitled to the protection of this Government. They will not tolerate the search or stopping by cruisers in the rebel service of vessels of the United States, nor any other act which is only privileged by recognized belligerency.

"While asserting the right to capture and destroy the vessels in question, and others of similar character, if any aggression upon persons or property entitled to the protection of this Government shall recommend such action, we can not admit the existence of any obligation to do so in the interest of Haiti or of the general security of commerce." (Wharton's Digest International Law, § 381.)

The position of the United States in regard to insurgent vessels may be summarized in the words of Mr. Wharton, Solicitor for the Department of State (May 18, 1885): "The Government of the

United States can not regard as piratical vessels manned by parties in arms against the Government of the United States of Colombia, when such vessels are passing to and from ports held by such insurgents, or even when attacking ports in the possession of the National Government. In the late civil war the United States, at an early period of the struggle, surrendered the position that those manning the Confederate cruisers were pirates under international law. The United States of Colombia, can not, sooner or later, do otherwise than accept the same view. But, however this may be, no neutral power can acquiesce in the position now taken by the Colombian Government. Whatever may be the demerits of the vessels in the power of the insurgents, or whatever may be the status of those manning them under the municipal law of Colombia, if they be brought by the act of the National Government within the operation of that law, there can be no question that such vessels, when engaged as above stated, are not, by the law of nations, *pirates;* nor can they be regarded as pirates by the United States."

"It will be seen, therefore, that the crews manning these vessels can not be regarded by this Government as pirates. But while this is the case, and while it may be conceded that vessels seized by them on the high seas are seized under claim of right, yet vessels belonging to citizens of the United States so seized may be rescued by our cruisers, acting for the owners of such vessels, in the same way that we could reclaim vessels derelict on the high seas." (See, also, Lawrence, Jour. Royal United Service Institution, XLI, p. 12.) In short, such acts are not piracy unless accompanied by *animus furandi.* It may be regarded as established that insurgents engaged in proper hostilities are not pirates. In the case of the United States *vs.* the *Ambrose Light* (25 Fed., 408), while the decision was that the action of the insurgent was technically piratical, yet the vessel was not subject to the penalty, but released. It is doubtful whether in a similar case any accusation of piracy would now be raised. It is, of course, not denied that the state against which the insurgents are in arms may regard insurgent vessels as piratical by domestic law, though the practice is to the contrary even in such instances.

If insurgents are not outlaws, and if they are not pirates, as seems to be admitted by practice on land and water, they certainly have a status somewhat different from that of loyal and obedient subjects. It is important to determine at what time they acquire this status. So far as the state against which the insurgents are in arms is concerned, there is no reason why any such admission should be made. The fact will doubtless be evident. It may be necessary, for various reasons, for a foreign state to

admit and make known the fact of insurgency to its own subjects in order that they may govern themselves according to the conditions prevailing in the disturbed state. By the formal proclamation of June 12, 1895, President Cleveland announced that the island of Cuba was "seat of serious civil disturbances accompanied by armed resistance to the authority of the established Government of Spain," and enjoins the citizens of the United States and all others within their jurisdiction "to refrain from taking part in such disturbances," and at the same time he enjoins "upon all officers of the United States charged with the execution of said laws the utmost diligence in preventing violations thereof, and in bringing to trial and punishment any offenders against the same." In the case of the *Itata*, May, 1891, the much less formal instructions of the Navy Department to Admiral McCann were held by the court as sufficient evidence of the attitude of the political department of the Government. Again, in his annual message of December 2, 1895, President Cleveland says: "Cuba is gravely disturbed. An insurrection, in some respects more active than the last preceding revolt, which continued from 1868 to 1878, now exists in a large part of the eastern interior of the island, menacing even some populations on the coast. Besides deranging the commercial exchanges of the island, this flagrant state of hostilities, by arousing sentimental sympathy and inciting adventurous support among our people, has entailed earnest effort on the part of this Government to enforce obedience to our neutrality laws and to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty." President Cleveland issued another proclamation recognizing the fact of "serious civil disturbance" in Cuba on July 27, 1896. In the case of the United States *vs.* the *Three Friends*, in referring to the above admissions by the political department of the Government of the fact of the insurrection in Cuba, the court says: "We are thus judicially informed of the existence of an actual conflict of arms in resistance of a government with which the United States are on terms of peace and amity, although acknowledgment of the insurgents as belligerents by the political department has not taken place." The conclusion from recent cases is that the official admission by proclamation, instruction, or similar act of the political department, presumably including the President and Secretaries, of the existence of an actual conflict of arms is sufficient to determine the attitude of the court toward cases arising in consequence of the conflict. The official admission, which is sufficient to determine the attitude of the Supreme Court, is in the United States sufficient to determine the attitude of all departments, as this is the court of last resort for

justification of their acts. It is established also that such admission of a state of insurgency by the political department of the Government brings into operation *ipso facto* certain laws of the United States by which its subjects are not ordinarily restrained in their action.

From the considerations thus far advanced it may be said that there has been a growing tendency to admit a hostile status short of belligerency of which it may be expedient for a state to take cognizance at a time when it is not expedient to recognize belligerency, that the actions of the party hostile to the parent state are not those of outlaws, and that the practice of the United States is to admit this hostile status as one affecting the operation of its domestic laws and changing the relations of its servants toward the parties to the conflict.

In view of the new conditions which arise as the consequence of the admission of insurgency, the first duty of the foreign state is to refrain for itself and its subjects from all participation in the struggle. This is especially emphasized in the President's proclamations of June 12, 1895, and July 27, 1896. The Supreme Court, in the case of the *Three Friends*, held that the laws "to preserve the neutral relations of the United States" were "applicable to a body of insurgents associated together in a common political enterprise and carrying on hostilities against the parent country in an effort to achieve independence, although recognition of belligerency has not been accorded," and the court further held that "Any insurgent or insurrectionary body or people acting together, undertaking and conducting hostilities, although its belligerency has not been recognized is included in the terms 'colony, district, or people' as used in the United States Revised Statutes, section 5283, making it an offense to fit out a vessel, to be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or any colony, district, or people with whom the United States are at peace." Hence the first consequence of the admission of insurgency by the United States political authorities is to put into operation the laws for the preservation of neutrality with respect to the parties to the conflict. Similarly, in Great Britain, the Foreign Enlistment Act becomes operative. (See case of the *Salvador*, L. R. 3 P. C., 218, in 1870.) This may occasion the state much difficulty and expense, yet such action may be more expedient than the recognition of belligerency and the assumption of its obligations.

Besides this obligation to observe this negative attitude of neutrality, it may be necessary to perform certain positive acts

which, in a state of peace, might be hostile and which might not be allowable in the time of recognized belligerency.

In commenting upon the right of an insurgent community to demand recognition as a belligerent, Hall (International Law, 4th ed., p. 33) offers the following opinion: "As soon, it is said, as a considerable population is arrayed in arms with the professed object of attaining political ends, it resembles a state too nearly for it to be possible to treat individuals belonging to such population as criminals; it would be inhuman for the enemy to execute his prisoners; it would be still more inhuman for foreign states to capture and hang the crews of warships as pirates; humanity requires that the members of such community shall be treated as belligerents, and if so, there must be a point at which they have a right to demand what confessedly must be granted. So far, the correctness of this view may at once be admitted. It is, no doubt, incumbent upon a state to treat subjects who may have succeeded in establishing a temporary independence as belligerents, and not as criminals, and if it is incumbent upon the state itself, it is still more so upon foreign governments, who deal only with external facts, and who have no right to pass judgment upon the value, from a moral or municipally legal point of view, of political occurrences taking place within other countries. But the obligation to act in this manner flows directly from the moral duty of human conduct, and in the case of foreign states from that also of not inflicting a penalty where there is no right to judge; it has nothing to do with international law." With the general statement current practice seems to accord, though the changed attitude toward insurgency would hardly justify the statement that the treatment of insurgents is a matter that has "nothing to do with international law." Whatever the basis of action, it has now become customary to treat insurgents as legal combatants, and to apply the rules of war in dealing with them rather than the local penal code or arbitrary rules. The President of the United States, speaking of the policy of concentration as instituted in Cuba in 1896, says: "This policy the late cabinet of Spain justified as a necessary measure of war and as a means of cutting off supplies from the insurgents. It has utterly failed as a war measure. It was not civilized warfare. It was extermination. Against this abuse of the rights of war I have felt constrained on repeated occasions to enter the firm and earnest protest of this Government." In the Blue Book, issued by the British Foreign office and containing the correspondence with reference to the treatment of rebels in South Africa, Mr. Chamberlain lays down the rule that there should be no vindictiveness in their treatment. Perels (Manual de Droit Maritime International, sec. 32, II) says: "Political parties in conflict with each other

ordinarily have recourse to the principles of international law to regulate their reciprocal relations only when forced to it by their interests. Objection can not be made if, at the very outset, the penal code is applied to the rebels. If, however, the party in revolt becomes an organized military power, and if the penal law is impotent, the governmental party provokes reprisals by attempting to make it prevail too long. When the circumstances, and especially the extent of the insurrection and the organization of the insurgent party no longer permit the application of the regular criminal law, it is then for the interest of both parties to put in force the international law of war, which does not at all involve the recognition of the legality of the uprising."

Some questions have recently arisen in regard to the treatment of protected and dependent communities in case of uprisings against the parent state. It may be safely said that when the conduct of the foreign relations of a community, whatever its degree of dependency, are intrusted permanently to an over state, at that time, unless there is specific reservation to the contrary, there passes to the over state the right to declare war, conclude peace, and make treaties. Such a condition deprives the dependent of the right to declare war against the over state as well as against foreign states. The protected community may, of course, rise up against the over state, as any party within a state may rise against the legitimate government, but it must gain its international status as a belligerent by recognition from the parent state or from a foreign state rather than by its own declaration. As Engelhardt has recently well said (Rev. du Droit Pub. et de la Science Pol., 1900, p. 213): "The protected state which takes arms against the protecting state does not *ipso facto* acquire the character of a belligerent, nor is there reason on this account for a declaration of neutrality by outside states."

At the time of the hostilities between France and Madagascar in 1895, Great Britain considered issuing a declaration of neutrality. The French ambassador protested that such a course would be unusual. Great Britain refrained from issuing the declaration, apparently considering the revolted protectorate in the same category with a revolting colony, or other dependency. The French, however, observed the laws of war in their treatment of the insurgents. The English law and practice maintains that insurrection in a dependent community "is waging war upon the Queen," and that this is an act which may involve annexation of the revolting territory. England has, however, sometimes treated these uprisings, as in the case of Manipur, 1891, as crimes to which the penal law extended, justifying thus the execution of the leaders of the revolt as criminals.

In the case of the Abyssinian revolt of 1895, Italy announced on the 25th of July that no foreign state had relations to or right to interfere between them. Great Britain seems to have taken a like position with reference to the South African Republic at first, indicating that she would not view with favor any outside relations touching her attitude toward that republic; indeed, that there was no war in South Africa. This is inferred in the Queen's speech of October, 1899. If there was no war, then the South African Republic could carry on its commerce freely even in arms and munitions of war. This condition of affairs apparently led to the declaration issued in November, that England had been at war with the South African Republic since October 11, 1899.

The practice of the parties to insurrectionary conflicts and of outside states has given evidence of the existence of certain well-understood lines of conduct which may in some cases be admitted to the dignity of rules.

1. It may be said to be established that the parties to a conflict that has attained the proportion of an insurrection shall observe, as far as possible, the rules of civilized warfare. Sela (La Administracion, October, 1895, "La beligerancia en la guerra civil,") maintains that the laws of war in regard to the treatment of enemies become immediately binding upon the legitimate government in case of civil war. The observance of these laws is necessary that the legitimate government may preserve its reputation as a civilized state. The history of the Polish, Hungarian, and British-Indian revolutions show a growing tendency to treat insurgents as legal enemies. These rules are also held as binding in the treatment of the small bands which may carry on desultory fighting after the surrender of the main body of the insurgents. Of course, the obligation to observe the rules of war are mutually binding on the parties to the conflict.

2. It is fully established that decrees of the parent state putting those in insurrection against it beyond the pale of law, or condemning them to unusual treatment, are not binding upon foreign states. Such a decree may be regarded as an admission by the parent state of the existence of an insurrection within its borders.

3. Insurgents made criminals by such special decrees or legislation are not regarded as liable to extradition.

4. In case of an insurrection an outside state has a right to protect the person and property of its subjects by force if necessary. An example which seems to have been generally approved is that of Admiral Benham in the Brazilian revolt of 1893–94, briefly cited in the Naval War College Manual of International Law as follows: "It [the question] was whether the insurgents, in the course of regular hostilities, such as a bombardment of the city or an attack

upon the Government forts, could practically prevent merchantmen from moving about the harbor and from receiving cargoes at the regular places. * * * The decision of Admiral Benham, in command of the United States naval force, was to the effect that this could be done by the insurgents and that any movement on the part of American merchant vessels during the continuance of actual hostile operations was at their own risk. But any attempt upon the part of the insurgents to prevent legitimate movements of our merchant vessels at other times was not to be permitted and that all possible protection was to be afforded such movements by the naval force of the United States assembled at Rio under his command." In a report from Mr. Wharton, Solicitor for the United States Department of State, April 21, 1885, the following rule is enunciated: "When vessels belonging to citizens of the United States have been seized and are now navigated on the high seas by persons not representing any government or belligerent power recognized by the United States, such vessels may be captured and rescued by their owners, or by the United States cruisers acting for such owner; and all force which is necessary for such purpose may be used to make the capture effectual," and as cited above, page 8, such vessels "may be rescued by our cruisers acting for the owners of such vessels in the same way that we could reclaim vessels derelict on the high seas."

"The commander and crew of any merchant vessel of the United States, owned wholly or in part by a citizen thereof, may oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel, or upon any other vessel so owned, by the commander or crew of any armed vessel whatsoever, not being a public armed vessel of some nation in amity with the United States, and may subdue and capture the same; and may also retake any vessel so owned which may have been captured by the commander or crew of any such armed vessel, and send the same into any port of the United States." (U. S. Rev. Stat., sec. 4295.)

The instructions recently sent to the admiral in command of the naval forces in China advised him to act "jointly with the other powers for the protection of American interests." This protection must not, however, be interpreted as involving obligation to prevent inconvenience and minor difficulties in the care of property and limitation of personal freedom.

5. Outside states may lawfully enter into such relations with insurgent representatives as may be necessary to protect their interest and to obtain exact information in regard to the status of the revolt. As Earl Russell announced in his note to Mr. Adams,

November 26, 1861 (U. S. Dip. Cor., 1862), that while not recognizing the insurgents as belligerents "that in cases of apprehended losses or injury to their subjects, states may lawfully enter into communication with *de facto* governments to provide for the temporary security of the persons and property of their subjects." Some authorities maintain that a state may accept an exequatur for its consul from the insurgent authority. These relations with the representatives of the insurgents do not give any of the rights of legations, though the inviolability of these representatives in the state with which they are dealing is conceded, *e. g.*, Chilean revolt of 1891.

6. The peaceable inhabitants of a region in control of insurrectionists can not be held guilty by the parent state for acts done in obedience to the *de facto* insurrectionary authority.

7. Acts not hostile to the parent state done under the authority of a *de facto* insurrectionary authority are lawful. "A *de facto* government is entitled to local allegiance" (Wharton Dig., sec. 203; Sen. Ex. Doc. 69, pp. 28, 29): It was decided in the case of Texas *vs.* White (7 Wall, 700) that "The legislatures of the seceded States during the late civil war are to be regarded, even by the Government of the United States, as exercising *de facto* authority in all cases in which their domestic power was absolute, and in which their action did not impair the supremacy of the national authority or the rights of citizens under the Constitution of the United States." The resumption of authority by the parent state "carries with it no right, so far, at any rate, as foreigners are concerned, to give retroactive effect to its measures and expose them to penalties and punishments and their property to forfeiture for acts which were lawful and approved by the existing government when done." Chief Justice Fuller recently, December 29, 1897, held in the case of Underhill *vs.* Hernandez (168 U. S., 250): "If the party seeking to dislodge the existing government succeeds and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation. If the political revolt fails of success, still if actual war has been waged, acts of legitimate warfare can not be made the basis of individual liability."

"Revolutions or insurrections may inconvenience other nations, but by accommodation to the facts the application of settled rules is readily reached. And where the fact of the existence of war is in issue in the resistance of complaint of acts committed within foreign territory, it is not an absolute prerequisite that the fact should be made out by an acknowledgment of belligerency, as other recognition may be sufficient proof thereof." (For similar

position on part of English court in 1894, see Mighell *vs.* Sultan of Johore, 1 Q. B., 149.)

8. Foreign states are bound to refrain from all acts "implying assistance, moral or material, indirect or direct." The admission of a status of insurgency by the political department of the Government puts into operation the domestic neutrality laws. (See case of *Three Friends*, 171 U. S., 495; R. *vs.* Jameson, 65 L. J. M. C., 218; R. *vs.* Sandoval, 16 Cox, 206.)

9. The legitimate government of the state in which the insurrection exists can not throw the burden of executing its decrees upon a foreign state. This has been recognized already in the case of decrees declaring insurgents outlaws, which have no effect in determining the relations of foreign states to the insurgents. In regard to closure of domestic ports by decree in time of insurrection, Secretary Bayard said: "I am bound to conclude, as a general principle, that a decree by a sovereign power closing to neutral commerce ports held by its enemies, whether foreign or domestic, can have no international validity and no extraterritorial effect in the direction of imposing any obligation upon the governments of neutral powers to recognize it or to contribute toward its enforcement by any domestic action on their part." (U. S. For. Rel. 1885, p. 256.) Perels (Manuel de Droit Maritime International, sec. 52, II) expounds the principle that closure of ports, whatever its purpose or the means employed to accomplish it, does not have the consequences, as it has not the character of a blockade. There is also no doubt that it can be maintained by force against neutral vessels which do not acknowledge it an l by seizure of the vessels which disregard it. In case of open resistance the destruction of the neutral vessel would likewise be justified by the law of war, but the condemnation of a vessel and its cargo as good prize because of the breach of a decree of closure is not admissible nor in accord with international law.

Finally, insurgency may be regarded as a fact which is generally accepted in international practice. The admission of this fact is by such domestic means as may seem expedient. This admission is made with the object of bringing to the knowledge of citizens, subjects, and officers of the state such facts and conditions as may enable them to act properly. In the parent state the method of conducting the hostilities may be a sufficient act of admission, and in a foreign state the enforcement of a neutrality law. The admission of insurgency by a foreign state is a domestic act which can give no offense to the parent state as might be the case in the recognition of belligerency. Insurgency is not a crime from the point of view of international law. A status of insurgency may entitle the insurgents to freedom of action in lines of hostile conflict

which would not otherwise be accorded, as was seen in Brazil in 1894 and in Chile in 1891. It is a status of potential belligerency which a state, for the purpose of domestic order, is obliged to cognize. The admission of insurgency does not place the foreign state under new international obligations as would the recognition of belligerency, though it may make the execution of its domestic laws more burdensome. It admits the fact of hostilities without any intimation as to their extent, issue, righteousness, etc. The admission of the existence of this status of insurgency makes unnecessary much of the earlier diplomatic circumlocution prevailing between the state divided by domestic strife and foreign states and makes it possible for states to conduct negotiations with much less liability to misunderstandings. This is particularly evident in the diplomatic correspondence of the last ten years. The tendency to depart from or give special interpretations to the principles ordinarily governing the recognition of belligerency is much less, because when a status of insurgency is admitted many of the domestic reasons for such recognition may disappear and the formal recognition need only take place when the international relations warrant such action. The admission of insurgency is the admission of an easily discovered fact. The recognition of belligerency involves not only a recognition of a fact, but also questions of policy touching many other considerations than those consequent upon the simple existence of hostilities.

In the transition of a community from a state of domestic hostility to the legitimate authorities to a position of equality in statehood, practice, policy, and reason seem to indicate the desirability of the acknowledgment of three stages: the status of insurgency, the status of belligerency, and that of statehood. The second and third stages are well understood, and this first stage is now beginning to demand definition.

Toward the definition of "insurgency" these lectures are offered as a slight contribution.